

Adam S. Affleck, Bar #5434 (adam-affleck@rbmn.com)

RICHARDS BRANDT MILLER NELSON

111 East Broadway, Suite 400

Salt Lake City, UT 84111

Telephone: 801-531-2000

Facsimile: 801-532-5506

Attorneys for Sheet Metal Works, Inc.

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

<p>In re:</p> <p>SHEET METAL WORKS, INC.,</p> <p>Debtor.</p>	<p>Case No. 19-28320</p> <p>Judge Joel T. Marker</p> <p>Bankruptcy Case. No. (Chapter 11)</p>
<p>NOTICE OF RESCHEDULED DEPOSITION (MARK BREWER)</p>	

PLEASE TAKE NOTICE that Sheet Metal Works, Inc. (“**SMW**”) will take the deposition of Mark Brewer (“**Brewer**”). Brewer was served with a Subpoena to Testify at Deposition and Rule 45 Notice on August 7, 2020. The deposition was originally scheduled for August 18, 2020, at 10:30 am. On August 6, 2020, counsel for Thermal West Industrial, Inc. (“**TWI**”) indicated that he was not available to attend the deposition on August 18, 2020, nor any other time prior to August 31, 2020, and that no there was no one in his office with any knowledge of the relevant matters that could handle the depositions in his stead. Therefore, the

deposition has been rescheduled to August 31, 2020 at 10:30 am. Mark Bewer has agreed to the rescheduled time.

The constable's return of service is attached as Exhibit A. The deposition will be taken in accordance with Rule 30 of the Federal Rules of Civil Procedure, made applicable through Bankruptcy Rules 7030 and 9014(c), and before a certified court reporter and notary public authorized to administer oaths. The deposition will be recorded by stenographic means and will continue until completed. It may also be recorded by sound and visual recording.

Date and time of rescheduled deposition:

August 31, 2020
10:30 a.m. until completed

Location of Deposition:

RICHARDS BRANDT MILLER NELSON
111 East Broadway, Suite 400
Salt Lake City, UT 84111

Dated this 17th day of August 2020.

RICHARDS BRANDT MILLER NELSON

/s/ Adam S. Affleck
Attorneys for Sheet Metal Works, Inc.

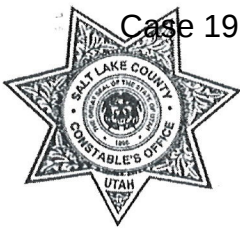
CERTIFICATE OF SERVICE

I hereby certify that on the 17th day of August, 2020, a true and correct copy of the foregoing *Notice of Deposition* was served by Electronic service [CM/ECF Service] as follows:

Electronic Mail Notice List:

- **Adam S. Affleck** adam-affleck@rbmn.com; andalin-bachman@rbmn.com; afflekar93359@notify.bestcase.com;
- **Megan K. Baker** baker.megan@dorsey.com; long.candy@dorsey.com
- **Laurie A. Cayton tr** laurie.cayton@usdoj.gov; James.Gee@usdoj.gov; Lindsey.Huston@usdoj.gov; Rinehart.Peschell@usdoj.gov
- **P. Matthew Cox** bankruptcy_pmc@scmlaw.com
- **Robert Crockett** rcrockett@fabianvancott.com
- **Allison Moon** allison.moon@usdoj.gov; marisol.solis@usdoj.gov
- **Douglas J. Payne** dpayne@fabianvancott.com, mdewitt@fabianvancott.com
- **Kami L. Peterson** Kami.Peterson@zionsbancorp.com, Angela.Norton@zionsbancorp.com; Deanne.Koecher@zionsbancorp.com
- **Jeff Tuttle** jtuttle@swlaw.com; wkalawaia@swlaw.com; csmart@swlaw.com; docket_slc@swlaw.com
- **United States Trustee** USTPRegion19.SK.ECF@usdoj.gov
- **Steven T. Waterman** waterman.steven@dorsey.com; bingham.karen@dorsey.com; ventrello.ashley@dorsey.com
- **Melinda Willden tr** melinda.willden@usdoj.gov, Lindsey.Huston@usdoj.gov; James.Gee@usdoj.gov; Rinehart.Peshell@usdog.gov

/s/ Adam S. Affleck



7026 South Commerce Park Drive #101 Midvale, UT 84047

(801) 255-5468

info@constablereitz.com

checkservice@constablereitz.com

http://www.constablereitz.com

Richards, Brandt, Miller & Nelson *
Adam S. Affleck
111 E. Broadway, Suite 400
Salt Lake City, UT 84111

Route: 11
(801) 531-2000

Docket: 730309

Received: 8/6/2020

Court Date: 8/18/2020 at 10:30 AM

Reference: 730309

Case No.: 19-28320

Date Completed: 8/7/2020 at 4:00 PM

Plaintiff:

Defendant: Sheet Metal Works, Inc.

Serve To: Mark Brewer

Location: 126 North 640 West , North Salt Lake, UT 84054

Documents	Qty	Cost Per Unit	Total
Subpoena To Testify At Deposition	1	\$20.00	\$20.00
Mileage	1	\$18.00	\$18.00
Witness Fee	1	\$50.35	\$50.35
Subtotal:			\$88.35
Additional Fees:			
Total:			\$88.35
Total Payment(s):			
Balance Due:			\$88.35

Thank You!

Payment due net 15 days. Make check payable to Constable Reitz and mail it to the address above. There is a \$35.00 fee for checks that are returned for non-sufficient funds.

FEIN: 83-3674843

Date Invoiced: 8/10/2020

+ \$50.35 w. Inc. Fee

AUG 06 2020

**United States Bankruptcy Court
DISTRICT OF UTAH, CENTRAL DIVISION**

In re

**SHEET METAL WORKS, INC.,
Debtor.**

Bankruptcy No. 19-28320

Chapter 7

**SUBPOENA TO TESTIFY AT A
DEPOSITION**

To: Mark Brewer
c/o Thermal West Industrial, Inc.
126 N. 640 W.
North Salt Lake, UT 84054
(801) 936-9550

730309

X YOU ARE COMMANDED to appear and testify at a deposition in a contested matter at the place, date, and time specified below:

PLACE OF TESTIMONY

RICHARDS BRANDT MILLER NELSON
c/o Adam S. Affleck
111 East Broadway, Suite 400
Salt Lake City, UT 84111

DATE AND TIME

August 18, 2020

10:30 a.m.

The deposition will be taken in accordance with Rule 30 of the Federal Rules of Civil Procedure, made applicable through Bankruptcy Rules 7030 and 9014(c), and before a certified court reporter and notary public authorized to administer oaths. The deposition will be recorded by stenographic means and will continue until completed. It may also be recorded by sound and visual recording. The deponent's attendance is compelled by subpoena under Rule 45.

ISSUING OFFICER SIGNATURE AND TITLE

/s/Adam S. Affleck
Attorneys for Sheet Metal Works, Inc.

DATE

August 6, 2020

ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER:

RICHARDS BRANDT MILLER NELSON
c/o Adam S. Affleck
111 East Broadway, Suite 400
Salt Lake City, UT 84111
Telephone: (801) 531-2000

Date: 7 Aug 2020 Time: 4:00 PM
RD 126 N 640 W North Salt Lake UT
Upon Order Madson
Deputy - Private Investigator - Process Server
Constable R-12, Salt Lake County
7026 Commerce Park Dr #101, Midvale, UT
84047 (801) 255-5468

Name: <u>Mark Brewer</u>	
Phone #: <u>801 936-9550</u>	
Active Military	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
Description of Person Served	
Ethnicity: <u>Cauc</u>	Sex: <u>SM</u>
Hair: <u>Grey</u>	Age: <u>50</u>
Height: <u>6'04"</u>	Weight: <u>200</u>
Recording # <u>NO</u>	

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for *(name of individual and title, if any)*: _____
on *(date)* _____.

☐ I served the subpoena by delivering a copy to the named person as follows: _____
_____ on *(date)* _____; or

☐ I returned the subpoena unexecuted because: _____

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of \$ _____.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____.

I declare under penalty of perjury that this information is true and correct.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information concerning attempted service, etc.:

Federal Rule of Civil Procedure 45(c), (d), (e), and (g) (Effective 12/1/13)
(made applicable in bankruptcy cases by Rule 9016, Federal Rules of Bankruptcy Procedure)

(c) Place of compliance.

(1) *For a Trial, Hearing, or Deposition.* A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
 - (i) is a party or a party's officer; or
 - (ii) is commanded to attend a trial and would not incur substantial expense.

(2) *For Other Discovery.* A subpoena may command:

- (A) production of documents, or electronically stored information, or things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises, at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) *Avoiding Undue Burden or Expense; Sanctions.* A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction — which may include lost earnings and reasonable attorney's fees — on a party or attorney who fails to comply.

(2) *Command to Produce Materials or Permit Inspection.*

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises — or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) *Quashing or Modifying a Subpoena.*

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

- (i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) *Producing Documents or Electronically Stored Information.* These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) *Claiming Privilege or Protection.*

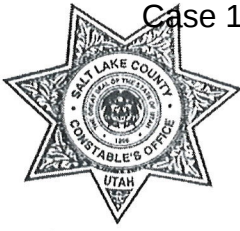
(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

...

(g) *Contempt.* The court for the district where compliance is required — and also, after a motion is transferred, the issuing court — may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.



Document Page 8 of 8
CONSTABLE'S RETURN

Docket #: **730309**

VS Sheet Metal Works, Inc.

Case # **19-28320**

Reference #: **730309**

Court Date: **Aug 18, 2020 at 10:30 AM**

I, Orson Madsen

being first duly sworn on oath and say: I am a duly appointed Deputy Constable, Salt Lake County, State of Utah, a citizen of the United States, over the age of 21 years at the time of service herein, and not part of or interested in the within action.

I received the within and hereto annexed,

Subpoena To Testify At Deposition & Rule 45

on **Aug 06, 2020**, and served the same upon

Mark Brewer

a within named **Witness** in said article(s) by serving a true copy of said article(s) for the Witness with

Mark Brewer (Personally)

a person of suitable age and discretion at

126 North 640 West , North Salt Lake, UT 84054

the usual place of business.

Served on **Aug 07, 2020 at 4:00 PM.**

I declare under criminal penalty of the State of Utah that the foregoing is true and correct. I further certify that at the time of service of the said article(s), I endorsed the date and place of service and added my name and official title thereto.

A handwritten signature in black ink, appearing to read "C. Reitz", written over a horizontal line.

Deputy Constable

SL 802

Constable Reitz, Salt Lake County Constable

7026 South Commerce Park Drive #101

Midvale, UT 84047 (801) 255-5468

TOTAL CHARGES: \$88.35

NOTES

Subpoena served with witness fee attached.

Served: Mark Brewer . - Phone Number: 801-936-9550.

Ethnicity: Caucasian Gender: Male Hair: Gray Age: 50 Height: 6'0" Weight: 200

** Based upon inquiry of the party served, the defendant is not in active military service of the United States.